

## REMARKS

### Application Amendments

Claim 1 has been amended to recite a non-embossed substrate. Support for this amendment can be found in the specification on page 3, lines 17-37. Additionally, Claim 1 has been amended to recite a substrate having an average basis weight from about 40 to about 90 grams per square meter and caliper ranging from about 0.3 to about 1.05 millimeters. Support for this amendment can be found in the claims as originally filed. Lastly Claim 1 now recites from about 1% to about 60% of a drying agent. Support for this amendment can be found in the specification on page 21, lines 29-30. Claim 5 has been canceled. No new matter has been added and no additional fee is believed to be due at this time.

### Rejection Under 35 USC § 103(a)

Manning et al. U.S. 4,755,421 in view of James et al. U.S. 5,674,591, Gordon et al. U.S. 5,763,332 and Pregozen U.S. 5,141,803

Claims 1-4, 7, 8 and 11-21 are now pending and have been rejected under 35 USC §103(a) as being unpatentable over Manning et al., U.S. 4,755,421, in view of James et al., U.S. 5,674,591, Gordon et al., U.S. 5,763,332 and Pregozen, U.S. 5,141,803, for reasons of record. The remarks previously made in prior Office Actions in support of patentability apply equally and will not be reiterated for brevity. Applicants respectfully traverse this rejection based on the amendments and remarks contained herein.

In view of the Examiner's remarks at page 5, it may be useful to consider controlling case law. The Applicants respectfully submit that in order for a rejection under § 103 to stand the Examiner must show some kind of teaching or suggestion in the cited references that would provide the motivation to one with ordinary skill in the art to combine the references to arrive at the Applicants claimed invention. "Measuring a claimed invention against the standard established by section 103 requires the oft-difficult but critical step of casting the mind back to the time of the invention, to consider the thinking of one of ordinary skill in the art, guided only by the prior art references and

the then-accepted wisdom in the field.” *In re Dembiczak* 175 F. 3d 994, 999 (Fed. Cir. 1999), citing *W. L. Gore & Assoc., Inc. V. Garlock, Inc.*, 721 F. 2d 1540, 1553 (Fed. Cir. 1983). The Examiner in the present Office Action states that each reference may only need to exhibit one or two features, but does not necessarily mean that every other aspect of the reference is wholly incorporated into the rejection. New combinations of known elements can be the basis of a new patent. However, when determining whether a new combination of known elements would be obvious to one of ordinary skill depends on various factors including whether the elements exist in analogous art. If the elements exist in analogous art, one must determine “whether the teachings of the prior art taken as a whole would have made obvious the claimed invention.” See *In re Young*, 927 F.2d 588, 591 (Fed. Cir. 1991). “The citing reference that merely indicate that isolated elements and/or features recited in the claims are known is not sufficient basis for concluding that the combination of claimed elements would be obvious.” See *Ex parte Hiyamizu*, 10 U.S.P.Q. 2D (BNA) 1393, 1394 (1988). There should be something in the prior art or a convincing line of reasoning in the answer suggesting the desirability of combining the reference in such a manner as to arrive at the claimed invention. Note *In re Dembiczak* 175 F. 3d 994, 999 (Fed. Cir. 1999).

Gordon teaches that greater than 2% of an anionic surfactant cannot be present in the emulsion, this teaches away from the present application and one must take the reference as a whole and not selectively choose elements in determinations of obvious rejections. James does not teach or suggest any use for the prospective substrate and without this suggestion or modification one of ordinary skill in the art would not be motivated to combine the teachings with the other cited art to arrive at the present application. Manning prepares the substrate by conventional wet laying techniques which the present application specifically teaches will not produce the desired substrate. “Combining prior art references without evidence of such a suggestion, teaching, or motivation simply takes the inventor’s disclosure as a blueprint for piecing together the prior art to defeat patentability ... the essence of hindsight.” *In re Dembiczak* 175 F. 3d 994, 999 (Fed. Cir. 1999), citing, *Interconnect Planning Corp. v. Feil*, 774 F.2d 1132, 1138, 227 U.S.P.Q. (BNA) 543, 547 (Fed. Cir. 1985). “The best defense, against the subtle but powerful attraction of a hindsight-based obviousness analysis, is rigorous

application of the requirement for a showing of the teaching or motivation to combine prior art references." *In re Dembiczak* 175 F. 3d 994, 999 (Fed. Cir. 1999), citing, *Interconnect Planning Corp. v. Feil*, 774 F.2d 1132, 1138, 227 U.S.P.Q. (BNA) 543, 547 (Fed. Cir. 1985). The Applicants respectfully request that the Examiner take into consideration the discussed caselaw in determinations of obvious rejections in the present application.

The Manning reference prepares the substrate by "conventional wet-laying techniques." (See column 5, line 30). The Manning reference fails to disclose a personal cleansing wipe with raised fibrous regions that have an average base weight ranging from about 40 to about 90 grams per square meter and a caliper ranging from about 0.3 to about 1.05 millimeters. The specific density is required of the present invention to allow the substrate to have the beneficial feel and effectiveness. There is no teaching or suggestion in Manning that the wipes contain raised fibrous regions. The present invention requires that the raised fibrous regions have an average base weight from 40 to about 90 grams per square meter and a caliper ranging from about 0.3 to about 1.05 millimeters. One of ordinary skill in the art would have no motivation to combine any reference with Manning to arrive at a wipe that contains raised fibrous regions that exhibit the average base weight and caliper range and is the personal cleansing wipe of the present invention.

The James reference is specifically directed toward the ability to place a textured design in a fabric. James does not suggest or teach the use of this fabric as a substrate that contains a cleansing composition that can be coated or impregnated into the substrate. Indeed, there is no disclosure in James regarding any prospective use of His substrate. Since there is no suggestion or motivation in James to place a cleansing composition with the substrate and Manning provides no motivation to one skilled in the to add a cleansing composition to a substrate that contains raised fibrous regions, there is no motivation to combine these references.

Gordon discloses a substrate that is conventional tissue paper. (See column 21, line, 35-36). The Examiner cites Gordon for its teaching of a wet-like cleaning wipe and anionic detergent surfactants. The Examiner agrees that Gordon warns from using significant levels of anionic surfactant, but asserts that it does not teach away. The

Examiner states that Gordon teaches anionic surfactants up to 2%, which the examiner finds to be within the Applicants' range which is 0.5 to 12.5% cleansing surfactant. However, when one reads the text of the Gordon reference, it teaches that anionic surfactants "cannot be present in the emulsion at significant levels (e.g., greater than 2% of the internal polar phase) because they can cause premature disruption of the emulsion." (See column 17, lines 47-50). This teaching would lead one of ordinary skill in the art away from use of such ingredients. The present invention is directed to a non-embossed, non-woven substrate formed from hydroentangled fibers. Gordon does not teach or suggest the use of the present invention's substrate and provides no motivation for one of ordinary skill in the art to use the wipe of Gordon combined with the prior discussed art to arrive at the present invention.

The wipe of Pergozen is processed into a uniform web by a carding machine. (See Column 6, lines 47-48). Therefore, the web would not have the raised fibrous regions of the present invention. Manning, James and Gordon all fail to specifically provide the content of the other elements of the cleansing composition. For this the Examiner cites Pergozen, which discloses an aqueous composition for impregnating a nonwoven wipe having a pH of from 3.5 to 4.5. The Pergozen reference relates specifically to the use of cationic biocides to preserve the integrity of wipes during storage to provide antibacterial properties to mostly hard surfaces. The Pergozen reference fails to disclose or suggest the addition of 1% to about 60% of a drying agent that provides for softer, smoother skin feel, with less stickiness. There is no teaching or suggestion that the additional elements disclosed in Pergozen be incorporated into a composition that is coated onto or impregnated into a non-embossed substrate. Therefore, without this suggestion one of ordinary skill in the art would not be motivated to combine the components of Pergozen with the cited references to arrive at the present application.

Accordingly, Claims 1-4, 7, 8, and 11-21 are nonobvious over the prior art of record and any combination thereof.

#### CONCLUSION

In light of the amendments to the claims and the above remarks presented herein, Applicants respectfully submit that Claims 1-4, 7, 8 and 11-21 are allowable over the

prior art of record. Reconsideration is respectfully requested. In the event that issues remain prior to allowance of the noted claims, then the Examiner is invited to call Applicants' undersigned attorney for further discussion.

Respectfully submitted,

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VERSION WITH MARKINGS TO SHOW CHANGES MADE

1.(Four Times Amended) A personal cleansing wipe article having superior softness, feel and cleansing properties, which wipe article comprises:

- A. a single layer, non-embossed, nonwoven substrate having an average basis weight ranging from about 40 to about 90 grams per square meter, having a caliper ranging from about 0.3 to about 1.05 millimeters, formed from hydroentangled fibers, said substrate having on a substantial portion of a base surface thereof a three-dimensional pattern, which pattern comprises a plurality of discrete, raised fibrous regions, wherein the raised fibrous regions have a density which is substantially the same as the density of the base surface, and wherein said raised fibrous regions are joined to said base surface by a fibrous transition region; and
- B. an aqueous liquid cleansing composition comprising
  - a. from about 0.5% to about 12.5% of the cleansing surfactant; [and]
  - b. from about 0.5% to about 5% of a lipophilic skin moisturizing agent wherein the cleansing surfactant comprises at least one anionic surfactant, and wherein said aqueous liquid cleansing composition is coated onto or impregnated into said substrate to the extent of from about 100% to about 400% by weight of the substrate; and
  - c. from about 1% to about 60% of a drying agent.